

Honorable Norman J. Davis
Presiding Judge
Superior Court of Arizona, Maricopa County
125 W. Washington St.
Phoenix, AZ 85003
(602) 506-5262

IN THE SUPREME COURT OF THE STATE OF ARIZONA

In the Matter of:

} Supreme Court No. R-14-____

}
} PETITION TO AMEND RULE 94
} OF THE RULES OF FAMILY LAW
} PROCEDURE AND RULE 64.1(C)
} OF THE RULES OF CIVIL
} PROCEDURE
}

Pursuant to Rule 28, Rules of the Supreme Court of Arizona, the Presiding Judge of the Superior Court of Arizona in Maricopa County, respectfully petitions this Court to adopt the attached proposed amendment to Rule 94 of the Rules of Family Law Procedure and Rule 64.1(c) of the Rules of Civil Procedure.

A judge or the court issues warrants. This is clear based on the language in the majority of the statewide Arizona court rules and case law. However, two rules – Rule 94 of the Rules of Family Law Procedure and Rule 64.1(c) of the Rules of Civil Procedure – use language different from all of the other rules, allowing the Clerk to issue certain arrest warrants. This petition seeks to align the language in Rule 94 of the Rules of Family Law Procedure and Rule 64.1(c) of the Rules of Civil Procedure with the language in all the other rules.

The Arizona Rules of Criminal Procedure, which are the rules governing the majority of the arrest warrants issued, clearly identifies that the court issues arrest warrants. *See, e.g.*, Ariz.R.Crim.P. 3.1(a) (“the court shall promptly issue a warrant...”); Ariz.R.Crim.P. 7.5(a) (“the court having jurisdiction over the

1 defendant released may issue a warrant...”); Ariz.R.Crim.P. 7.6(c)(1) (“If at any
2 time it appears to the court that the released person has violated a condition of an
3 appearance bond, it [the Court] shall issue a bench warrant for the person's
4 arrest.”); Ariz.R.Crim.P. 27.6(b) (“the court ... may issue a warrant for the
5 probationer's arrest...”). *See also* Fed.Crim.Proc.R. 4 (“the judge must issue an
6 arrest warrant ...”).

7 Other statewide rules align with the language used in the Rules of
8 Criminal Procedure. Rules 26, 27, 27, and 32 of the Rules of Procedure for the
9 Juvenile Court all use the language “the court may issue.” *See also*
10 Ariz.R.P.Juv.Ct. 23(G) (“the court having jurisdiction over the juvenile shall
11 issue a warrant...”). Likewise, Rule 96(a)(14) of the Rules of the Arizona
12 Supreme Court specifically authorize court commissioners to “[i]ssue civil arrest
13 warrants.”

14 The majority of the Rules of Family Law Procedure addressing the
15 issuance of warrants also use the language that the court issues the warrants.
16 Rules 92(F), 94(B)(1) and 94(B)(2) all use the phrase “the court may... issue” a
17 warrant, whether it be a civil arrest or child support warrant. There is no reason
18 for Rule 94(C) to vary from this language.

19 Similarly, Rule 64.1(b) of the Rules of Civil Procedure states the “court
20 may, on motion of a party or on its own motion, issue a civil arrest warrant” and
21 the language of Rule 64.1(c) should be the same.

22 Arizona case law also commonly refers to the court having issued an
23 arrest warrant. *See, e.g., State v. Sun. Sur. Ins. Co.*, 232 Ariz. 79, 80 ¶2, 301 P.3d
24 583, 584 (App. 2013) (“the trial court issued a warrant for his arrest”); *In re*
25 *Daniel A.*, 210 Ariz. 162, 164, ¶ 2, 108 P.3d 941, 943 (App. 2005) (“[t]he court
26 issued three warrants”); *State v. Adler*, 189 Ariz. 280, 281, 942 P.2d 439, 440
27 (1997) (“the trial court issued a warrant for defendant’s arrest”).

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1 For the foregoing reasons, the Presiding Judge of the Superior Court in
2 Maricopa County respectfully requests this Court amend Rule 94 of the Rules of
3 Family Law Procedure as detailed in Exhibit A and Rule 64.1(c) of the Rules of
4 Civil Procedure as detailed in Exhibit B to clarify the issuance of arrest warrants,
5 bringing these rules into conformity with the language used in the rest of the
6 statewide court rules for the State of Arizona.

7 Respectfully submitted this 10th day of January, 2014.

8 /s Norman J. Davis

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10 Hon. Norman J. Davis
11 Presiding Judge
Superior Court of Arizona, Maricopa County

12 Electronic copy filed with the Clerk
13 of the Supreme Court of Arizona
14 this 10th day of January, 2014.
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Exhibit A

Rules of Family Law Procedure

Rule 94. Civil and Child Support Arrest Warrants

A. Definitions.

1. A “civil arrest warrant” is an order issued in a non-criminal matter directing to any peace officer in the state to arrest the individual named therein and bring such person before the court.

2. A “child support arrest warrant” is an order issued by a judicial officer in a noncriminal child support matter, directing any peace officer in this state to arrest the person named therein and bring such person before the court.

B. When Issued.

1. The court may, on motion of a party or on its own motion, issue a civil arrest warrant if it finds that the person for whom the warrant is sought:

a. having been ordered by the court to appear personally at a specific time and location, and having received actual notice of such order, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered; or

b. having been personally served with a subpoena to appear in person, at a specific time and location, including a warning that failure to appear may result in the issuance of a civil arrest warrant, has failed to appear as ordered.

2. The court may in any action pursuant to A.R.S. § 25-502, on motion of a party or on its own motion, issue a child support arrest warrant as provided by A.R.S. § 25-681(A).

C. Content of Warrant. The civil arrest or child support arrest warrant shall be ~~ordered by the judicial officer and~~ issued by the COURT clerk. It shall contain the name of the person to be arrested, a description by which the person can be identified with reasonable certainty, and any information required to enter the warrant into the Arizona criminal justice information system. The warrant shall command that the person named be arrested and either remanded to the custody of the sheriff or brought before the judicial officer or, if the judicial officer is absent

1 or unable to act, the nearest or most accessible judicial officer of the superior
2 court in the same county. A warrant that is issued pursuant to this rule remains in
3 effect until it is executed or extinguished by the court.

4 **D. Bond and Release Amount.**

5 1. A civil arrest warrant shall set forth a bond in a reasonable amount to guarantee
6 the appearance of the arrested person or an order that the arrested person be held
7 without bond until the arrested person is seen by a judicial officer. The procedure
8 for forfeiture of bonds in criminal cases shall apply.

9 2. A child support arrest warrant shall be issued in conformity to A.R.S. §§ 25-681
10 and 25-683. The court shall determine and the warrant shall state the amount the
11 arrested person shall pay in order to be released from custody.

12 **E. Time and Manner of Execution.**

13 1. A civil arrest warrant is executed by the arrest of the person named therein.
14 Unless the court otherwise directs upon a showing of good cause, a civil arrest
15 warrant shall not be executed between the hours of ten p.m. and six-thirty a.m.
16 The arrested person shall be brought before the issuing judicial officer, or if that
17 judicial officer is absent or unable to act, the nearest or most accessible judicial
18 officer of the superior court of the same county, within twenty-four (24) judicial
19 business hours of the execution of the warrant. If the person is arrested in a county
20 other than the county of issue, the arresting officer shall notify the sheriff in the
21 county of issue, who shall, as soon as possible, take custody of the arrested person
22 to the issuing judicial officer.

23 2. A child support arrest warrant shall be executed in a time and manner in
24 conformity with A.R.S. § 25-682.

25 **F. Duty of Court after Execution of Warrant.**

26 1. After execution of a civil arrest warrant, the judicial officer shall advise the
27 arrested person of the nature of the proceedings, set the least onerous terms and
28 conditions of release that reasonably guarantee the required appearance, and set
the date of the next court appearance.

2. After execution of a child support arrest warrant, the judicial officer shall
proceed in conformity with A.R.S. § 25-683.

Exhibit B

Rules of Civil Procedure

Rule 64.1(c). Content of warrant

The civil arrest warrant shall be ~~ordered by the judge and~~ issued by the COURT~~clerk~~. It shall contain the name of the person to be arrested and a description by which such person can be identified with reasonable certainty. It shall command that the person named be brought before the judge or, if the judge is absent or unable to act, the nearest or most accessible judge in the same county. The warrant shall set forth a bond in a reasonable amount to guarantee the appearance of the arrested person, or an order that the arrested person be held without bond until the arrested person is seen by a judge.